No. 2426

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

IN ADMIRALTY.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and JOHN HENRY, Master and Claimant Thereof, Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation, Owner of the Steamers "HELENE," "MIKAHALA," "LIKELIKE," and "MAUNA KEA," for Itself, the Officers and Crews of Said Steamers and Other Servants of Said Owners, Appellee.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and JOHN HENRY, Master and Claimant Thereof, Appellants,

vs.

MILLER SALVAGE COMPANY, LIMITED, a Corporation, Appellee.

and

The British Ship "CELTIC CHIEF," Her Tackle, etc., and JOHN HENRY, Master and Claimant Thereof, Appellants,

vs.

MATSON NAVIGATION COMPANY, a California Corporation, Owner of the Tug "INTREPID," for Itself and the Officers and Crew of Said Tug, Appellee.

REPLY BRIEF OF MILLER SALVAGE CO., LIMITED, APPELLEE.

Appeal from the United States District Court for the Territory of Hawaii

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PHILIP L. WEAVER,
502 Stangenwald Building, Honolulu, T. H.,
Proctor for Miller Salvage Co., Ltd., Appellee.

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STATEMENT OF THE CASE IN PART.

The appellee has not had the benefit of seeing the brief of the appellants, before writing this brief in Honolulu. Rule 24 allows the attorneys to wait till ten days before the day set for hearing before serving a copy of the brief on the opposing counsel. This gives no time to the attorneys in Honolulu to see and reply to the same. Consequently it will be necessary to state, as best we can, the facts which should not be omitted in a statement of the case from the point of view of the Miller Salvage Company, Limited, which is referred to hereafter as the Salvage Company. It will not be possible to merely supplement the statement of the appellants.

The "Celtic Chief" was a British ship which went ashore about a half mile west of the entrance channel into Honolulu Harbor on Monday morning, December 6th, 1909. She remained ashore until about midnight of Wednesday, December 8th, 1909. Her beam was about 40 feet.

When she was pulled off, she was in a comparatively undamaged condition. She had one of her plates dented. (See Testimony of Capt. Henry, transcript page 145.) A small amount of damage was done to a mast and to a rail by the efforts of the salvors other than the Salvage Co. The cargo was not damaged in the vessel. A small amount of damage was done in lightering the bags of fertilizer, which formed the bulk of her cargo, by reason of bags broken in hoisting them out of the vessel and upon lighters alongside the ship as she lay in the

exposed position on the coral bottom or reef. This amounted to only $1441 out of a cargo of $111,000. (Tr., p. 3372.)

The value of the vessel is no longer a subject of controversy. The value of the cargo is as stated in the decision without any contradicting testimony.

The sum of $1400 expended by the Miller Salvage Co. in hiring men, and providing for them, is uncontradicted. The finding of the judge is amply supported by the evidence. (Tr., p. 3375.)

A part of the case, which appellee surmises will not be adequately stated by the appellant in its brief, is that relating to the cause which led Captain Miller of the Salvage Co. to begin lightering the cargo of the "Celtic Chief." When Captain Miller, manager of the Salvage Co., boarded the "Celtic Chief" on Monday morning, he had an interview with Captain Henry, in which the latter insisted upon Captain Miller using his apparatus to lighter the cargo from the vessel. Captain Miller pointed out the danger of this procedure, but was ordered to lighter the vessel. (See Tr., pages 132 for Capt. Henry, and 1351 for Capt. Miller.) Captain Miller worked all Monday with his men and vessels, and up to Tuesday morning when he had them loaded. Then he brought the vessels and men into the harbor and landed the cargo. Captain Miller, in the mean time, had noted the effect of the lightering of the vessel, to be to allow her to go further on the reef with the assistance of the swell from the stern. (See Tr., pages 1352, 1355.) Captain Miller advised and urged that he be allowed to bring out his heavy 10,000-pound anchor and moor it astern of the stranded vessel, and that a cable be attached thereto and brought to the stern of the "Celtic Chief" to hold her while lightering was going

on. Miller had worked in Florida waters, where it was a rule of court that an anchor should be run out before lightering of a vessel.

In *Dalcoath,* D. C., 16 Fed. 2064.

(Tr., pages 1355, 1547, 1552.) Miller failed to come back with the lighters on Tuesday. He was busy getting ready the heavy anchor and the cable and tackle with which to hold the stranded vessel. He was not willing to go on lightering, because of the danger. He offered his services to Captain Henry on Tuesday, in the way of apparatus and men to hold the vessel to an heavy anchor and to keep a strain on the line. Captain Henry accepted these services. (Tr., page 1356.) Captain Henry was not satisfied with the position in which Captain Miller put his anchor on Tuesday night, and ordered him to remove it and put it in another position more directly astern. (Tr., pages 133, 1356.) It took all the daylight hours of Wednesday to get the tackle rigged and taut, by which Captain Miller expected to exert a strain on the "Celtic Chief." When he had accomplished this, he had a triple purchase rigged on the deck of the "Celtic Chief," the last fall of which could be led around the capstan manned by his men, or to the steam winch, if not in use.

The steam winch, however, was being used by the Inter-Island Co. in conducting the lightering operations, which they undertook upon the discontinuance of such by the Salvage Co. A steel cable 2¼ inches in diameter ran from the anchor to the stern of the "Celtic Chief," where a hawser was bent on a few feet from the stern. The hawser was 12 inches in circumference. (Tr., pages 133, 1395.)

The new 12-inch manila hawser had a tensile strength of at least 65,000 pounds. (Tr., page 1398.)

This stern line extended 800 feet astern of the "Celtic Chief" to the anchor. The anchor held fast, being caught on the back of a rock. (Testimony of Loncke, p. 501.) The depth of the water at the anchor was six fathoms. (Miller, Tr., page 1630.) It was a gradually sloping bottom. The line was dead astern. The Salvage Co. kept a heavy strain upon the anchor line through the wharf chock of the "Celtic Chief" where the purchase tackle rigged was over the poop deck. There is ample evidence to the effect that this line was very taut. (See Testimony of Loncke, page 480; Henry, pages 134, 156; Clarke, page 1046; Mason, page 897.) It was kept taut from the time it was first rendered so, till the vessel began to move astern.

The tide was rising from 6 p. m. on Wednesday, till the vessel came off. All this time the stern line of the Salvage Co. was kept taut, by the efforts of the men at the capstan, exerting a strain through a triple purchase tackle, upon a very heavy anchor fixed in the bed of the ocean. The anchor was held from moving home by a mass of coral reef. (See Testimony of Bray, Tr., page 722; Loncke, page 501; Miller, page 1403.) The dimensions of the anchor were 10 feet from fluke to fluke, with an 18-foot stock, shank 14 feet. (Tr., pages 461, 462.)

The Salvage Company was keeping a strain on the stern line, as the line slackened. (See Testimony of Loncke, Tr., pages 465, 474; Clarke, the foreman, pages 1032, 1033, 1038, 1046; Mason, pages 895, 896, 897, 917; Bray, page 855.)

There was no other agency pulling on the stranded vessel which had a straight, taut line to a fixed, immovable object. Every other agency was dependent upon the factor of a floating vessel on the line be-

tween the stranded vessel and the point of pull. While the Salvage Company kept its stern line "taut as a fiddle string" (Tr., page 897), and while the tide was rising and the cargo was being lightered, the purchase tackles, which were rigged on the "Celtic Chief" and by means of which the line was kept taut, dropped on deck.

This was the indication that the ship was coming off. (See Testimony of Clarke, Tr., page 1038; Mason, pages 911, 917; Weisbarth, page 595; Loncke, page 481.)

The point in dispute is the claim by the appellee that the ship began to move before the signals to begin pulling hard were run up on the "Celtic Chief."

The Salvage Co. was, at that time, exerting a continuous strain on the "Celtic Chief" from a fixed and immovable anchor, by means of a hawser and tackles capable of enduring a strain of 30 to 40 tons. Sixty men were sometimes at work at the capstan taking in slack. (Tr., page 895.)

The capstan was a differential gear pattern.

While this strain was being exerted, the other vessels were holding their lines to the "Celtic Chief," making no special exertion until the tide should be high (high tide large 1.7 feet at 2 a. m., Thursday morning, December 9, 1909), when a second and third red light should go up in the rigging of the "Celtic Chief" to indicate that special exertions to pull the stranded vessel off were then to be made by all the vessels having lines to her. The evidence to sustain the libellee's view is found among other places in the following testimony: Clarke, page 1038; Mason, page 910; Loncke, pages 480, 481; Miller, pages 1389, 1391; Henry, page 140; Weisbarth, page 595.

The ship was stranded on a coral reef which had

large lava rocks in the sea bottom. It was aground for part of its length only; the current from east to west tended to force the ship broadside on the reef. The force of the breakers astern tended to force her broadside on the reef on one or the other side. The time of year and the condition of the weather threatened a hard blow from the south, which would tend to force the vessel broadside on the reef and destroy her.

The reef tended to pierce her bilge and cause total loss to her cargo, as well as the vessel.

THE ARGUMENT.

Appellant has alleged seventeen errors, as committed by the lower court. It is not possible at the time of preparing this brief to know what errors are relied upon, therefore all the possible contentions of the appellant must be imagined and discussed at the risk of unduly lengthening the brief.

The first assignment, which attacks the whole judgment, will be discussed last.

FIRST.

(Assignment Error 3.)

THERE IS AMPLE EVIDENCE TO SUSTAIN THE FINDING THAT LIBELLANT'S VESSELS AND EMPLOYEES RAN A MATERIAL RISK WHILE ENGAGED IN THE SALVAGE SERVICE, GREATLY OUT OF THE ORDINARY. THEREFORE ASSIGNMENT NO. 3 IS NOT WELL TAKEN.

The conclusions of the trial judge who heard the

witnesses will not be reversed upon appeal, unless there is a decided preponderance of evidence against the view taken by the trial judge, or a mistake is clearly shown. 1 Cyc. 904.

The evidence was clearly sufficient to sustain the decision. The evidence as to the weather and dangerous position runs all through the testimony. It may serve a useful purpose to point out a few places only which would sustain the decision. A few samples of the testimony alone show the character of the weather which was endured, and the risk. (Loncke, Tr., pages 443, 445, 446, 447, 448, 449; Mason, Tr., page 906; Bray, Tr., page 713; Weisbarth, Tr., pages 571-2; Macaulay, Tr., page 2217.)

SECOND.

The alleged errors under numbers 3, 4, 5 and 6 may be treated together.

THERE IS MORE THAN SUFFICIENT EVIDENCE TO SUPPORT THE FINDING OF THE TRIAL JUDGE THAT (ASSIGNMENT NO. 2) THERE WAS GREAT DANGER OF TOTAL DESTRUCTION OF THE VESSEL AND THAT THE APPELLEE TOOK AN APPRECIABLE PART IN THE SALVAGE;

(ASSIGNMENT NO. 4) THAT THE SERVICES WERE SUBSTANTIAL; AND INDISPENSABLE AND NOT OF MINOR IMPORTANCE;

(ASSIGNMENT NO. 5) THAT THE SALVAGE COMPANY GAVE MATERIAL AID IN PREVENTING THE VESSEL FROM GOING BROADSIDE ON THE REEF, OR IN RENDERING HER MORE SAFE IN HER POSITION ON THE REEF;

(ASSIGNMENT NO. 6) THAT THE COMPANY

WAS ENTITLED TO AN AWARD FOR MERITORIOUS SALVAGE SERVICES, AS DISTINGUISHED FROM MERE LIGHTERAGE SERVICES.

(a) *THE VESSEL AND CARGO WERE IN GREAT DANGER.* (Loncke, Tr., pages 474, 475, 476; Capt. Miller, pages 1403, 1404, 1449; Tom Mason, page 908; Weisbarth, page 572; Bray, page 713; Macaulay, pages 2183, 2194-8, 2203, 2217; see opinion, page 3352.)

The cargo of fertilizer was particularly perishable in sea water.

(b) The findings objected to by assignments 4, 5 and 6 are supported by the evidence running all through libellant's case. The trial court must have believed the evidence to be true in order to have awarded a share equal to about a quarter of the salvage to the libellant.

Libellant believes, however, that the true view of the facts will support its claim that the libellant was not only of material aid, but also the chief factor in floating the "Celtic Chief." That the other agencies prevented the ship from going broadside on the reef, and assisted in lightering the cargo, but that the Salvage Co.'s anchor and tackle really played the leading part. It is contended that the facts show that after the Salvage Co. got its line taut on Wednesday, no other assistance was necessary, except such as the "Likelike" performed in towing the "Celtic Chief" into the harbor. The "Arcona" was only a lumbering pretentious nuisance to everyone, and to the Salvage Co. in particular, whose anchor buoy it cut loose and damaged.

The libellee says that neither it nor Captain Miller was guilty of negligence or misconduct.

The assignment of errors 7, 12, 13 and 15 refer to this claim.

The alleged error 7 is based upon a claim of disputed fact. It is claimed that Captain Miller's award should be diminished for lack of skill in lightering the cargo of the vessel before anchors had been put out to prevent her drifting.

Captain Miller ought to turn in his grave at the monstrous injustice attempted to be perpetrated upon his memory by the Machiavellian tactics adopted by the appellant. The trial court reproved this attitude of the appellant. (Tr., page 3370.)

Captain Miller protested to Captain Henry that the ship ought not to be lightered till there was an anchor out astern. (See Tr., pages 1350-6, 1547.) Captain Henry insisted that the vessels towing on her could hold her. Miller was ordered to do the lightering, against his protest. When he saw that the lightering was having the dangerous result he predicted, he took his lighters in Tuesday morning and did not bring them out again.

Captain Henry disputes this. But that is because he saw his mistake and tried to lie out of it. Is it reasonable to suppose that Captain Miller would prefer to do lightering under the circumstances? Captain Miller's action spoke louder than words when he failed to return to lighter. He merely did what he thought best, and no longer acted under the Captain's mistaken ideas. Captain Henry's testimony is discredited, because he tried to get and did get the Inter-Island Co. to lighter his cargo immediately upon finding out that Miller was not coming back with the lighters. All the testimony fits with the idea of Captain Miller.

(See Captain Henry's testimony, page 132; see opinion, page 3369.)

Alleged errors 12 and 13 are based on the claims that the entire award to the appellee, the Salvage Company, should have been forfeited, by reason of what the appellant is pleased to call misconduct of Captain Miller, its superintendent, and of the company.

Captain Miller was never guilty of any misconduct. The most has been made of a feeling of rivalry to get the vessel off quickly and efficiently. Captain Miller believed that he could pull the vessel off himself with his cable attached to a fixed anchor, without any other help, *AND WAS DOING SO.*

(See Tr., pages 1360, 1361, 1367.)

He was a man specially skilled in salvage work. (See Tr., pages 1366, 1367.) He wished to demonstrate this fact. Appellee claims that a reading of the whole case, with all its disputes, shows that the real effective agency which pulled the "Celtic Chief" off the reef was the strain kept on the Salvage Company's line to a fixed anchor, while the tide was rising and the swells were lifting the "Celtic Chief."

The other vessels were useful to take charge after she was afloat, and ample arrangement for making signals was made to prevent any trouble, from lack of knowledge of when she was coming off.

As a matter of fact, the witnesses on the stranded vessel felt the bump, when she first began to move. To talk of concealment in any serious manner is only clouding up the issues to escape paying a fair reward to the salvor. It was a piece of bi-play in what Miller called an *"opera buffet."* He told the pilot he would pull the vessel off in half an hour (page 360). It is not worthy of serious consideration. The frivo-

lous horseplay about bumping the stern of the "Celtic Chief" into the stern of the "Arcona" to show that she was not pulling, would be too trivial to consider had not the judge of the trial court considered the matter.

It is talking about using a sailing vessel stern end first as one would use a pebble on an elastic and shoot it accurately through the water 800 feet away at an object which subtends an angle made by an object 60 feet wide in an 800-feet radius. To anyone, who seriously considers this fact, or diagrams the attempt, it becomes clearly an absurdity to try. In his playful way, Miller said he was going to do it. He never intended to injure the "Celtic Chief." He stated he thought the damage would be trivial and he would pay for any damage done. He was in a playful, boisterous mood and said these things, but when actions are considered, was there anything which could have hurried his men which was not done to encourage the men under Miller? They were working for double time and in relays, with a rivalry excited by Miller to get the work done effectively. Was not this the best way to get results?

Further, the cases do not bear out the contention that Miller was blameworthy and the Salvage Company should suffer, for not informing Captain Henry that he believed the ship was coming off the reef when they heard the first bump in the cabin of the "Celtic Chief." No harm was done the vessel, and the vessel was pulled off sooner than the others expected to have her pulled off, because of Miller's efficient means. Captain Miller's conduct was not blameworthy.

The case which approaches nearest the one at bar is "The Birdie," Federal Cases, No. 1431, page 438. This overruled a lower court, which found the sup-

pression of information reprehensible. We submit that nothing was left undone by Miller to pull the vessel off, which he could have done. He believed that the other agencies were useless at that time. They had performed their function of holding the vessel from going broadside on the reef until he had gotten out a stern anchor and line sufficient to hold the vessel against the swells approaching the "Celtic Chief" from the stern.

The cases which the libelee may cite, depending upon the premises that the ship was brought into greater danger by the acts of the libelee, do not apply to the case at bar.

The claim that the ship was brought into greater danger by the Salvage Company's lightering her on Monday, comes with bad grace from Captain Henry, who ordered the work done against the advice of Miller. (See opinion, page 3369 of transcript.)

Miller gave way to the opinion of Henry when Henry ordered the anchor placed astern of the "Celtic Chief"; there was a difference of opinion as to where the anchor should be placed, and the master's orders governed.

The true rule applicable is found in *Western Transfer Co. v. Great Western*, Fed. Cases, No. 17443, page 78:

"A reduction will be more or less in proportion to the misconduct, whether slight or aggravated, and the degree of injury or inconvenience, resulting therefrom to those interested in the property."

In the case at bar there was no real misconduct; it was mere boisterous play, which resulted in spurring the men up to extra exertion on account of the rivalry. The result was all in favor of a quicker rescue. There was no inconvenience resulting. There

was only a grand success, in rescuing the vessel, practically undamaged, with the cargo damaged only in the work of lightering.

The "Likelike" stood ready to take charge upon the signal that the vessel was coming off and all was well prearranged. There was no danger to the "Celtic Chief." Miller never intended that any real damage should be done her. He was only anxious to demonstrate that he was doing the work, even if he approached the "Arcona" in the proof of it.

The most is made of this point because of the strategy of the appellant. If it can establish that Miller and the "Arcona" did practically all the work, then the way is clear to get out of paying for what was done for appellant. The "Arcona" makes no claim. Then, if the claim of the Salvage Company can be cut out entirely because of the by-play of Miller, being magnified into something substantial, a brilliant victory is recorded to the counsel. The benefit has been received and the rescuers go unrewarded. This is the spirit of the appellant, who complains of misconduct on the part of Miller. Perhaps it is different if the misconduct is "within the law." But such conduct is not to be encouraged in a court where equity rules govern.

As to assignment of error No. 13, based upon the claim that Miller wilfully gave false testimony, it is plain that the trial court, who saw the witnesses, did not so consider the testimony. (See opinion, page 3369.)

Such a claim comes with ill grace from the ship whose master testified that Captain Miller did not wish to put out an anchor when he first went out to the vessel. The deliberate lie was perceived by the trial judge, and the circumstances helped to expose

the master's trickery. By this lie, he was able to claim that Miller's reward should be cut down, for faulty methods of salvage.

By assignment of error No. 15, the appellant claims that the appellee showed a selfish and calculating spirit.

The trial judge did not find that to be the case. The testimony shows that the Salvage Company used extraordinary energy to assist the vessel in distress, not in any selfish and calculating spirit, but in a spirit of rivalry. The same selfish and calculating spirit is shown when the rival baseball clubs try to win a pennant for the best play. It was a play of skill and the best method proved itself; now, it is sought to claim that the Salvage Company was not doing its utmost to pull the vesel off. The facts show and the trial court found that the Salvage Company was a substantial element of the rescue. The alleged selfishness was only sportsmanlike rivalry and not blameworthy. The healthy rivalry was not discouraged in the case of "The Birdie" above cited.

It is elementary that the law appeals to self-interest, as a means to encourage salvors. (Benedict's Admiralty, 4th Ed., page 173.)

A certain amount of rivalry is encouraged by the policy of the law. Appellee claims this rule has not been exceeded.

FOURTH.

(Assignment of Error No. 8.)

The award of $30,000, or 17½ per cent on the value of the vessel and cargo saved (see opinion, Tr., page 3373), was not an excessive percentage considering the danger in which the vessel lay and the fact that

she was saved substantially unharmed after three days of determined effort; and the danger to the men landing cargo under such circumstances. (See opinion, Tr., pages 3348 to 3352, 3370, 3371, for description of the danger.)

The vessel was lying where lava rocks are among the coral reefs. She was not ashore her whole length, but only partly ashore. Capt. Miller says she was free on her shore end and fixed aft. The swell was causing her to bump. Her cargo was perishable in sea water. She was going further in-shore in spite of towing vessels. Without the towing vessels she would have gone broadside on, she would have been bilged, and the cargo of fertilizer lost. She was being lightered under dangerous circumstances till the Salvage Co. held her.

FIFTH.

(Assignment of Error No. 9.)

The court was simply justified in finding the value of (a) libellant's vessels, and (b) of the "Celtic Chief."

Miller knew what the vessels were worth to him in his business and showed that they were worth that much to him, as constituting a going concern.

The assesed value for taxation purposes is hardly the value of the property of a going concern, but much less. The court cut down the value of five vessels, including two steamers, to $10,000, for he values the tackle and anchor at $12,000. (Tr., page 1418.)

This is a great and unwarranted reduction. The "Concord" alone was worth $3000 as a schooner. That left $7000 for the other four vessels. The allowance should have been much more. Even three-quarters

of the value would not have been an unfair allowance to the appellee. $33,000 for all appliances and apparatus held for use in such emergencies is only reasonable.

SIXTH.

(Assignment of Error No. 10.)

The opinion of the court (Tr., page 3366) shows why the services of the "Arcona" were not substantial and indispensable. The opinion is amply justified from the facts of the case.

The heavy anchor at a fixed point, behind a rock, with a strong line running to purchase tackle, is infinitely more effective than any steamer riding at anchor with the steam winch taking in the slack on the anchor, and attempting to hold a stranded vessel. There is not the rigidity of the pull in the latter case. The "Arcona" was not pulling at the time the "Celtic Chief" came off. She was waiting for a signal to pull.

SEVENTH.

(Assignment of Error No. 11.)

THE OPINION OF THE TRIAL JUDGE GIVES AMPLE REASON, FOUNDED ON SUFFICIENT TESTIMONY, WHY THE "CELTIC CHIEF" WOULD HAVE COME FREE WITHOUT THE SERVICES OF THE "ARCONA."

Libellant claims that the line of the Miller Salvage Co., run out directly astern, held taut by the purchase tackle to a fixed and immovable anchor of 5 tons weight, with its flukes against a lava rock, was sufficient alone without other agencies to hold the "Celtic Chief" in place while the tide was rising and the

"Celtic Chief" was being lightened by the removal of her cargo.

This is the fundamental reason why the Miller Salvage Co. was right in claiming $20,000 for salvage or two-thirds of the amount, which the trial judge awarded. It seems unjust to penalize the libellant by awarding costs against it, in the light of the award found fairly due by the trial judge. The belief of the libellant that it was the most effective agency was well founded in its opinion, in the light of the evidence that all the other agencies together had no such fixed point upon which to get a grip and exert a great strain without elasticity due to the buoyancy of vessels on the line of strain.

This belief, founded upon the evidence, and the fact that the court found $30,000 a reasonable sum to award as a whole, show that the libellant was justified in asking for $20,000. It had reasonable ground to believe and does believe that it is entitled to such award. The claim should not be held to be so excessive as to demand the payment of costs, especially when the trial court found that a total claim of $30,000 was reasonable.

It is not just to add the claims together and say they are unfair when combined, for they overlap. If the libellant was the chief agency, then they were entitled to $20,000. If the Inter-Island Company was the chief agency, they were entitled to the greater sum, and the Salvage Co. to less. The claims together represent conflicting claims, because of disagreement as to shares of the work done. It is unfair to punish libellant for making a fair claim, based upon a reasonable view of the case, even if not sustained by the trial court. The decree as to costs should be modified.

EIGHTH.

(Asignment of Error No. 16.)

THE COURT WAS RIGHT IN ALLOWING INTEREST FROM THE TERM OF THE COMPLETION OF THE SALVAGE SERVICES.

The allowance of interest by way of damage is in the discretion of the courts.

1 Cyc. 891.

Citing *The Steamboat Swallow,* 23 Fed. 13, 665.

NINTH.

The award of $8000 in favor of libellant was warranted by the evidence. In fact, the evidence would support a larger award up to $20,000 claimed by the libellant. It is entirely a reasonable view that the lightering operations of the Salvage Co. and the pulling done on the heavy anchor entitle the libellant to two-thirds of the credit for the successful rescue of the vessel. The only substantial benefit of the other vessels was to hold the ship from going broadside on, and to help pull when the time came to make the attempt, with some lightering done, as well. None of their lines held the vessel with a rigid line, when the swells lifted her.

There is a manifest error in the decree of the trial court, in awarding to the foreman and men of the Salvage Company and other servants of the owner, the sum of $1500 to be taken out of the share of the Salvage Company.

The men were engaged for this job. They were

paid by the day, having been gathered up on the waterfront for this particular job at $2 a day for a common laborer, with 50 cents an hour overtime. Most of the men were engaged for this particular purpose. They had a pre-existing duty to do just that particular work on the "Celtic Chief," and received high wages and a big allowance of overtime for their work. Apart from the impracticability of finding these men four years after the work was done, or even finding out the true names of certain particular Japanese or Hawaiians put on the list with scores of others in the early morning of Monday, December 6, 1909, there is no rule in Admiralty which gives special salvage to such men.

See

Kennedy on Civil Salvage, 25, 26.

The Solway Prince, 8 Aspinwall's Maritime Reports (new series) 128, 130; citing *The Neptune,* 1 Hagg. 227; *The Hannibal,* L. R. 2 A. & E. 53; *The Cetewayo,* 9 Fed. 717.

The latter case indicates the rule as applied to the crews of a wrecking vessel, employed by the month, whose duty was not to do salvage work. That illustrates how far the rule goes. It points out how the case at bar is distinguished from one where the crew should receive compensation.

A just award should be given libellants. The costs should not be taxed against the libellants.

Respectfully submitted,

PHILIP L. WEAVER,

Proctor for Miller Salvage Co., Ltd.,
Appellee.